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November 25, 2024

VIA ECF

Hon. Vernon S. Broderick
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: Bernier et al. v. Gard Recycling, Inc. et al.,
Case No.: 23-CV-761 (VSB)

Dear Judge Broderick:

This firm represents Plaintiffs in the above-referenced matter. We write to request an extension of the deadline to file a default judgment against Gard Recycling, Inc., DRC Group, Inc. and Beverage Recycling Corporation until after the claim against the answering Defendants, Guastavo Rodriguez and Alex Doljansky, is resolved or, if the Court declines to grant this request, until January 10, 2025. We apologize for the delay in making this application, which was due on November 18, 2024. Unfortunately, due to turnover at our firm, the Court's deadlines were not calendared and we only today discovered the error.

On October 24, 2024, the Court ordered Defendants to file a letter by October 31, 2024 advising the Court whether they intended to retain counsel. The Court also indicated that the failure to retain counsel would result in the Corporate Defendants being held in default. The Court then ordered Plaintiffs to move for a default judgment by November 18, 2024 should Defendants fail to submit a letter by October 31, 2024, which Defendants failed to do.

We respectfully request that the Court adjourn the deadline to move for a default judgment against the Corporate Defendants in order to avoid the possibility of inconsistent judgments between the Corporate Defendants, which are now in default, and Defendants Guastavo Rodriguez and Alex Doljansky, who can proceed pro se. Courts have declined to enter a default judgment against a non-answering defendant when there were answering defendants in the matter because of the risk of inconsistent judgments and waste of judicial resources that would arise from having to determine damages for the same work more than once. Lemache v. Tunnel Taxi Mgmt., LLC, 354 F. Supp. 3d 149, 154 (E.D.N.Y. 2019) (citing cases). We therefore respectfully request


that the Court adjourn Plaintiffs' deadline to move for a default judgment until after the claims against Defendants Guastavo Rodriguez and Alex Doljansky are resolved.

In the alternative, if an adjournment until the resolution of the active claim is not possible, we respectfully request an extension until January 10, 2025 to file the motion. From December 9, 2024 until December 20, 2024 I am on trial in a class action case Gonzalez v. Allied Concrete et al., 2:14-cv-4771 (LGD) in Central Islip. The Gonzalez trial is a jury trial that involves over a dozen witnesses, including an expert who will have to fly in for the trial. This trial will therefore take up the overwhelming majority of my firm's time until the end of the year. We therefore request this extension.

We thank the Court for its consideration of this letter.

Respectfully submitted,

-----/s/-----
Michael Taubenfeld

APPLICATION GRANTED
SO ORDERED 
VERNON S. BRODERICK
U.S.D.J.

Date: November 26, 2024

Plaintiff's deadline to move for a default judgment against corporate Defendants Gard Recycling, Inc., DRC Group, Inc. and Beverage Recycling Corporation is adjourned sine die.

Pursuant to the Second Amended Case Management Plan and Scheduling Order, (Doc. 50), fact discovery has concluded.

No later than January 3, 2025, the parties are to submit a joint letter updating the Court on the status of the case, including but not limited to whether either party intends to file a dispositive motion, what efforts the parties have made to settle the action, whether any discovery disputes remain outstanding, and whether the parties request referral to a Magistrate Judge for settlement purposes. If either party contemplates filing a dispositive motion, the parties should be prepared to discuss a briefing schedule at the post-discovery conference.

The Court will conduct a telephonic post-discovery conference on January 10, 2025 at 2:00 P.M. The dial-in number is 1-855-244-8681 and the access code is 2309 3085 835. There is no attendee ID.